

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:) CHAPTER 13
MACK ARTHUR LESTER)
DEBTOR.) CASE NO. 18-70090-PMB
)

**CHAPTER 13 TRUSTEE'S
OBJECTION TO CONFIRMATION & MOTION TO DISMISS**

COMES NOW Melissa J. Davey, Chapter 13 Trustee, and objects to confirmation of the plan and files this motion to dismiss under 11 U.S.C. Section 1307(c), for cause, including the following reasons:

1. The Debtor has failed to pay the Chapter 13 Plan payments to the Trustee as required by 11 U.S.C. Section 1326.

2. In accordance with General Order Nos. 18-2015 and/or 22-2017 and the Statement of Rights and Responsibilities, the Debtor's attorney should timely provide proof of Debtor's \$2,024.00 per month rental income to the Chapter 13 Trustee. 11 U.S.C. Sections 521(a)(1), 1325(a)(3), 1325(a)(6), 1325(b)(1)(B) and Bankruptcy Rule 1007.

3. The Trustee requests proof of the \$800.00 per month expenses for taxes reflected on Debtor's schedules in order to determine whether the Plan complies with 11 U.S.C. Sections 1325(a)(3) and 1325(b)(1)(B).

4. The Debtor has failed to provide the Trustee with a copy of the federal income tax return for the most recent tax year ending immediately before the commencement of the instant case in violation of 11 U.S.C. Section 521(e)(2)(A)(i).

5. The Trustee requests proof that Debtor has paid the post-petition mortgage payments for Debtor's residence in order to determine whether the Plan complies with 11 U.S.C. Sections 1325(a)(3) and 1325(b)(1)(B).

6. The Debtor should provide proof of the fair market value of all of Debtor's real properties so the Trustee may conduct a hypothetical liquidation analysis. 11 U.S.C. Sections 1325(a)(3) and 1325(a)(4).

7. The Chapter 13 Plan appears to be infeasible because the budget in the Schedules fails to include an expense for Debtor's 401(k) contribution, a mortgage to Peoples in the amount of \$425.00 per month, and a mortgage to Synovus in the amount of \$325.00 per month. 11 U.S.C. Section 1325(a)(6).

8. Section 3.6 of the proposed Chapter 13 plan either (1) fails to provide an interest rate to be applied to any allowed secured claims not treated specifically under the plan, preventing the Trustee from properly administering the plan, or (2) improperly crams down the interest rate to less than the current national prime interest rate. 11 U.S.C. Section 1325(a)(5)(B). *See Till v. SCS Credit Corp.*, 541 U.S. 465 (2004).

9. Debtor has retained possession and/or use of two (2) credit cards without court approval in violation of 11 U.S.C. Sections 1305(c), 1325(a)(1), 1325(a)(3), 1325(a)(7), and 364.

10. Pursuant to Debtor's testimony at the Meeting of Creditors, the Debtor's rental income is understated on Schedule I.

WHEREFORE, Trustee moves this Honorable Court to inquire into the above objections at the separately scheduled and noticed confirmation hearing, deny confirmation of the Chapter 13 plan, dismiss the case, and for such other and further relief that this Court deems just and proper.

/s/ Jason L. Rogers

Jason L. Rogers
Attorney for Chapter 13 Trustee
GA Bar No. 142575

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CERTIFICATE OF SERVICE

This is to certify that I have on this day electronically filed the foregoing Objection to Confirmation & Motion to Dismiss using the Bankruptcy Court's Electronic Case Filing program, which sends a notice of this document and an accompanying link to this document to the following parties who have appeared in this case under the Bankruptcy Court's Electronic Case Filing program:

Joseph Chad Brannen chad@brannenlawfirm.com,
info@brannenlawfirm.com;5321@notices.nextchapterbk.com

I further certify that on this day I caused a copy of this document to be served via United States First Class Mail with adequate postage prepaid with adequate postage prepaid on the following parties at the address shown for each:

DEBTOR(S):
MACK ARTHUR LESTER
104 WYNGATE CHASE
STOCKBRIDGE, GA 30281

Wednesday, January 23, 2019.

/s/


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